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Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 26 October 2004 from the Permanent Mission of Belgium to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Belgium to the United Nations presents his compliments to the Chairman of the Security Council Committee established under resolution 1540 (2004) and has the honour to refer to his note of 21 June 2004 (SCA/10/04 (02)).

In response to that note, the Mission encloses herewith the first report of Belgium on the measures it has taken or contemplates taking to implement the resolution mentioned above (see annex).

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Annex to the note verbale dated 26 October 2004 from the Permanent Mission of Belgium to the United Nations addressed to the Chairman of the Committee

Report of Belgium

Belgium has the honour to submit herewith its national report in accordance with paragraph 4 of Security Council resolution 1540 (2004).

As a State member of the European Union, it also makes reference to the joint report of the European Union, which will be transmitted separately to the Committee established pursuant to Security Council resolution 1540 (2004).

It should be read in conjunction with this national report.

Operative paragraphs

Paragraph 1

"***Decides*** **that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;**"

Belgium provides no assistance in any form to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons or their means of delivery.

Such assistance is prohibited by Belgian law, as described in detail in the responses to the following paragraphs.

Paragraph 2

"***Decides also*** **that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;**"

Actions undertaken by Belgium

Article 2 of the Act of 10 July 1978 approving the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction contains penal and administrative sanctions for violations of the prohibitions set forth in article 1 of the Convention.

The more recent Act on terrorist offences of 19 December 2003 stipulates that violations of article 2 of the Act of 10 July 1978 may constitute a terrorist offence. The manufacture, possession, acquisition, transport or provision of nuclear or chemical weapons, the use of nuclear, biological or chemical weapons, and the

research into and development of chemical weapons may also constitute a terrorist offence.

This legislation provides for penal sanctions. The use of these weapons of mass destruction to commit a terrorist act shall be punished by life imprisonment. Any person who participates in an activity of a terrorist group, including the provision of information or material means to the terrorist group or by any form of financing of an activity of a terrorist group, knowing that his participation contributes to the commission of a crime or offence by the terrorist group, shall be sentenced to imprisonment for five to ten years and shall be liable to a fine.

In accordance with the Act of 11 January 1993 on the prevention of the use of the financial system for the purpose of money-laundering (transposing the Directive of the Council of the European Communities of 10 June 1991), capital or property is deemed illegal when such capital or property is the proceeds of an offence linked to terrorism.

With respect to nuclear weapons, the prohibition contained in paragraph 2 of the resolution may be deduced from the Belgian legal framework as a whole, which limits nuclear activity or any activities involving radioactive substances to natural or legal persons who have an authorization from the Federal Agency for Nuclear Control (AFCN) to develop or exploit such substances.

Belgian law provides that any person who stores, uses or transports nuclear materials may not, without authorization from the Federal Agency for Nuclear Control, transfer them to persons other than those whose duties entitle them to receive such materials. The same rule applies to documents related to nuclear materials (Act of 2 April 2003).

More generally, it can be stated that in Belgium any natural or legal person whose activities have any connection to nuclear materials or more broadly to radioactive materials, is subject to surveillance and monitoring by the Federal Agency for Nuclear Control. Any violation of the laws in force is a punishable offence, and the penal provisions in force cover both attempt and collusion.

Actions planned by Belgium

A preliminary draft of a law implementing the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction will be submitted to the legislature for adoption.

Paragraph 3

"***Decides also*** **that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:**

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;"

Actions taken by Belgium itself and within the framework of the European Union

Belgium is a party to the Treaty establishing the European Atomic Energy Community (EURATOM). This Treaty gives broad powers to the EURATOM

Commission to ensure that nuclear materials are not diverted for undeclared purposes. All Belgian installations submit records of nuclear materials for review by the Commission, in conformity with chapter VII of the Treaty. Any failure to comply with obligations imposed on operators under chapter VII is punishable. In the event of a violation, Belgium must ensure the imposition of sanctions, and where necessary, must exact compensation from the perpetrators. To make it possible to monitor the inventory, operators are required to keep accounting records in accordance with rules established in Commission Regulation 3227/76.

As a European Union member State, Belgium is a party to the Safeguards Agreement concluded on 5 April 1973 by the Community Member States which have no nuclear weapons of their own, EURATOM and the International Atomic Energy Agency (IAEA). The legal basis for this agreement is article III of the Treaty on the Non-Proliferation of Nuclear Weapons. The Safeguards Agreement allows the IAEA inspectorate to enter nuclear installations so as to verify that nuclear materials have not been diverted for undeclared purposes.

Belgium signed the Additional Protocol to the Safeguards Agreement on 22 September 1998, with its partners in the European Union, the EURATOM Commission and IAEA. Owing to measures provided for in the Protocol, IAEA can now verify that there are no undeclared nuclear materials or activities in the territory of Belgium. The Additional Protocol entered into force on 30 April 2004.

The Act of 20 July 1978 (amended by the Act of 15 April 1994 establishing the Federal Agency for Nuclear Control and relating to protection against ionizing radiation) regarding the implementation of the Safeguards Agreement of 5 April 1973 provides for inspectors from EURATOM and IAEA to be accompanied by nuclear inspectors from the Federal Agency for Nuclear Control. These inspectors are officers of the criminal police and can investigate and report on violations. When the Act implementing the Additional Protocol has been adopted by Parliament, that competency will be extended to the Additional Protocol.

The Royal Decree of 20 July 2001 establishing general regulations for the protection of the population, workers and the environment against the hazards of ionizing radiation applies to the production, manufacture, transfer by sale or free of charge, import, possession, transport or use for commercial, industrial, scientific, medical or other purposes of devices, installations and substances capable of emitting ionizing radiation. The Decree provides that installations in which fissile materials, radioactive waste, radioactive substances, X-ray generating devices or particle accelerators are present must obtain an authorization from the Federal Agency for Nuclear Control for the establishment and operation of such installations.

Under the terms of the Decree, persons and enterprises engaged in the import into or transit through the national territory of radioactive substances or devices containing them must be duly authorized by the Federal Agency for Nuclear Control. The authorization request must contain such information as the type of usage and the characteristics of the substances and devices. The delivery of radioactive materials must be registered and monitored. The importer and distributor are required to submit monthly reports to the Agency on deliveries and imports, identifying the addressees.

The European Union Directive on high-risk sealed sources is currently being transposed into Belgian law.

Belgium supports the efforts of IAEA to increase the security and safety of radioactive sources. It is working on implementing the guidelines contained in the IAEA Code of Conduct on the Safety and Security of Radioactive Sources; and accordingly is in the process of evaluating all aspects of the guidelines with a view to amending the national legislation as necessary to comply with its international commitments. Furthermore, Belgium actively participated in the IAEA technical meeting on the formulation of guidelines for the import and export of sources.

The transport of radioactive materials must conform to the provisions of the relevant conventions and regulations, such as the International Regulations concerning the Carriage of Dangerous Goods by Rail, the European Agreement concerning the International Carriage of Dangerous Goods by Road, the Regulations regarding the Transportation of Dangerous Goods on Ocean-going Vessels issued by the International Maritime Organization, and the Regulations for the Carriage of Dangerous Goods on the Rhine. The transport of radioactive materials may be carried out only with prior authorization from the Federal Agency for Nuclear Control. The Agency is also empowered to check whether all provisions of the transport authorization are correctly implemented and observed. In the case of non-compliance, the Agency may demand immediate corrective action or, if need be, retract the transport authorization.

The Act of 15 April 1994 establishing the Agency also provides for a surveillance system: the members of the Agency's surveillance system — who are appointed to monitor compliance with the Act and its implementation orders, and who are considered officers of the criminal police — investigate and submit reports showing prima facie violations of the Act and of the Agency's implementation orders.

The Ministry of Foreign Affairs is the national authority with respect to the Convention on the Prohibition of the Development, Manufacture, Stockpiling and Use of Chemical Weapons and on Their Destruction. The installations concerned must make a declaration to the national authorities indicating that their activities are not prohibited within the meaning of article VI of the Convention. The Organization for the Prohibition of Chemical Weapons has conducted many routine inspections of the Belgian chemical industry.

"(b) Develop and maintain appropriate effective physical protection measures;"

Actions undertaken by Belgium

The Act of 10 January 1955 regarding the disclosure and development of inventions and manufacturing secrets affecting the defence of the national territory or the security of the State prohibits the disclosure of manufacturing secrets and inventions when such disclosure runs counter to the interests of national defence or the security of the State. The perpetrator of the disclosure is criminally liable.

Belgium is a party to the Convention on the Physical Protection of Nuclear Materials, which entered into force in the European Union on 6 October 1991. It is

playing a very active role in the review of the Convention now taking place under the auspices of IAEA.

The implementation of article 7 of this Convention required amendment of the Belgian Penal Code. The Act of 17 April 1986 incorporates into the Penal Code penalties for the following offences:

- Threatening to use nuclear materials in carrying out an attack;
- Threatening to steal nuclear materials in order to force a person, organization or State to commit or refrain from committing an act;
- Stealing or extorting nuclear materials;
- Receiving, acquiring, possessing, using, altering, transferring, abandoning, transporting or dispersing nuclear materials intentionally and without authorization from the competent authority.

With a view to implementing article 8 of the Convention, the Act of 17 April 1986 also incorporates into the Code of Penal Procedure provisions stipulating that the Belgian courts are competent to prosecute offences committed in the territory of one of the States parties to the Convention or on board a ship or aircraft registered in one of those States, when the alleged perpetrator of the offence is in Belgian territory and the Belgian Government has not granted his extradition to that State.

Current actions

The legislature has decided to conduct a comprehensive review of the system for the physical protection of nuclear materials and installations, and requested the Federal Agency for Nuclear Control to formulate proposals (Act of 2 April 2003). The recommendations of IAEA on physical protection, as expressed in Information Circular INFCIRC 226/Rev.4, constitute the basis of these new regulations, whose basic elements are now being finalized.

"(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;"

Actions undertaken by Belgium itself and in the framework of the European Union

The Belgian customs administration is able to control illicit trafficking in military and dual-use products and technology. This authority is derived from the following customs regulations and legislation relating to the import, export and transit of goods:

- Council Regulation (EEC) No. 2913/92 of 12 October 1992, establishing the Community Customs Code;
- The Act of 11 September 1962 relating to the import, export and transit of goods, as amended.

In addition, the following regulations establishing a system of export controls on arms, munitions and related technology give the customs authorities the power to exercise controls:

- Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.
- The Ministerial Orders of 28 September 2000 regulating the export and transit of dual-use items and technology, incorporating national implementation provisions transposed from Council Regulation (EC) No. 1334/2000. Export and transit licences are required, except where the transit takes place without trans-shipment or change in mode of transport.
- The Act of 5 August 1991 on the import, export, and transit of, and on combating trafficking in arms, munitions and equipment specifically intended for military use or law enforcement and related technology, and its amendments of 25 March 2003, whereby Belgium regulated brokering operations, and of 26 March 2003, whereby Belgium integrated the European code of conduct on arms sales into its domestic legislation.

"**(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;**"

Actions undertaken by Belgium itself and in the framework of the European Union

- The Act of 11 September 1962 relating to the import, export and transit of goods, as amended.
- The Act of 5 August 1991 on the import, export, and transit of, and on combating trafficking in arms, munitions and equipment specifically intended for military use or law enforcement and related technology, and its amendments of 25 March 2003, whereby Belgium regulated brokering operations, and of 26 March 2003, whereby Belgium integrated the European code of conduct on arms sales into its domestic legislation.

These laws provide for administrative and criminal penalties which are also applicable to offences against Council Regulation (EC) No. 1334/2000.

Certain implementing provisions were reproduced in the Royal Decree of 8 March 1993, amended on 2 April 2003, regulating the import, export and transit of arms, munitions and equipment specifically intended for military use and related technology.

- The Act of 9 February 1981 regulating conditions for the export of nuclear materials and equipment and nuclear technological data.

In this context, Belgium wishes to emphasize the vital importance of cooperation among all actors at the national level in the area of export controls. This inter-agency approach contributes strongly to the decision-making process and to the effectiveness of controls.

Concerning the nuclear-export-control regime, Belgium has established an Advisory Commission on the Non-proliferation of Nuclear Weapons (CANPAN). Every nuclear-export-licence application is submitted to this inter-agency group, which comprises experts from the Departments of Energy, Economics and Research, Foreign Affairs, Foreign Trade, Defence, and State Security, and from the Federal Agency for Nuclear Control (AFCN).

The Commission gives its views to the Government, which then takes the final decision on the licence application. The Commission also makes recommendations to the Government on appropriate legislative measures in its field, including the list of nuclear goods to be controlled. The members of the Commission share information on all subjects in the field of nuclear non-proliferation.

Current actions

The executive branch will submit to Parliament a complete review of legislation concerning nuclear export controls, with a view to increased transparency and improved implementation of certain provisions of the international regime, such as the "catch-all clause".

Paragraph 5

"*Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;"

Belgium is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) and to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (CBW). Belgium participates actively in the work of the Organization for the Prohibition of Chemical Weapons (OPCW) and the International Atomic Energy Agency (IAEA), and in the work taking place in Geneva on the strengthening of the Biological Weapons Convention.

Belgium is a party to the International Code of Conduct against Ballistic Missile Proliferation (The Hague Code of Conduct).

Paragraph 6

"*Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;"

Actions undertaken by Belgium and the European Union

Belgium is an active member of multilateral export-control regimes such as the Nuclear Suppliers Group (NSG), the Zangger Committee, the Missile Technology Control Regime (MTCR), the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA) and the Australia Group (AG). Belgium considers that these regimes' common lists, which are drawn up by experts and considered as international standards by numerous countries, constitute an excellent basis for the drafting of national lists. Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology reproduces those lists (see above).

Paragraph 8

"***Calls upon*** **all States:**

"(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;"

Actions undertaken in the framework of the European Union

Belgium refers to the joint report of the European Union, and recalls its activities in the framework of the European Union strategy against the proliferation of weapons of mass destruction.

"(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;"

- The Act approving the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Act of 10 July 1978).

Actions planned by Belgium

A preliminary draft of a law to implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction will be submitted for approval by Parliament, and will incorporate specific provisions relating to the Convention.

"(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;"

Belgium contributes to the realization of the goals of multilateral organizations in the field of peace and security, such as IAEA and OPCW. It also plays an active part in IAEA activities, as both a member State and a member of the Board of Governors. It provides extrabudgetary resources to IAEA in the form of a technical support programme in the area of safeguards.

Belgium also contributes to OPCW, both as a member State and as a member of the Executive Council. It provides extrabudgetary resources to the organization's Technical Secretariat for the training of inspectors, and to OPCW itself and its member States in the area of obsolete and abandoned chemical weapons.

"(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;"

In accordance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the Belgian national authorities are in close contact with the chemical industry and its professional federation concerning activities not prohibited by the Convention and its verification regime.

The authorities also work closely with the nuclear sector, to keep operators informed of worldwide developments in the concepts of non-proliferation and physical protection. The sector is also consulted when laws and regulations in this field are being drafted.

Paragraph 9

"*Calls upon* all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;"

Belgium undertakes to continue promoting dialogue and cooperation in the field of non-proliferation, at both multilateral and bilateral levels, in order to respond to the threats posed by the proliferation of nuclear, chemical, and biological weapons, and their means of delivery.

Paragraph 10

"Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;"

Belgium fully supports the goals of the Global Partnership against the Spread of Weapons and Materials of Mass Destruction, and takes an active part in it by means of specific projects for the reduction of stocks of sensitive nuclear materials and the dismantling of submarines.

Belgium also supports the Interdiction Principles for the Proliferation Security Initiative and participates in the activities of the Proliferation Security Initiative (PSI) itself.

As for Belgian seaports, bilateral initiatives between customs authorities are being prepared in the field of container security and, more specifically, to prevent illicit transfers of radioactive materials (the Megaports Initiative).

The Belgian customs also take part in expert meetings on the implementation of controls within multilateral non-proliferation regimes.

In certain cases of illicit trafficking in radioactive materials where Belgium is directly or indirectly concerned, experts from the Federal Agency for Nuclear Control can collaborate with foreign institutions, assisting either in the detection of the offence or in the recovery of the materials.